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SECRETARY

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

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MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2005-20**  
**72 West Street**  
**Foxborough, MA**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Foxborough Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Normandy Farms Campground (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 72 West Street, Foxborough, MA.

**B) Procedural History**

By written notice dated March 21, 2005, the City of Foxborough Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 72 West Street, Foxborough, MA. The Appellant filed an appeal of said order on April 29, 2005. The Board held a hearing relative to this appeal on September 14, 2005, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Albert Daniels, President, Normandy Farms Campground. Deputy Chief Steven M. Bagley represented the Foxborough Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Chief Thomas Coulombe and Brian Gore. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Foxborough Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

**D) Evidence Received**

1. Application for Appeal
2. Documents in Support of Application for Appeal
3. Order of Notice of Foxborough Fire Department
4. Notice of hearing to Appellant
5. Notice of hearing to Fire Department
6. Photographs of Building (A-C)
7. Floor Plan
8. Annual Corporate Filing Report
9. Appellant package in support of Appeal (Tabs 1-9)

**E) Subsidiary Findings of Fact**

- 1) By Notice dated March 21, 2005, the Foxborough Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 72 West Street, Foxborough, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2.
- 2) The appellant operates an extensive year round campground and recreational area . Within this campground is a substantial recreational lodge. This building, the subject of this appeal, is a large, open pavilion of post and beam construction with bare concrete floors, and large windows all around. The post and beam structure has steel beam columns supporting steel headers that hold up the architecturally designed glue laminate wood trusses. The main function area is approximately 60 ft. by 60 ft. with a cement floor, and a ceiling height of 26 ft. The main area has 5 exits in every direction, of which, three are 6ft. double glass doors and two are 3 ft. glass doors, all of which have emergency panic hardware.
- 3) In further support of his appeal, the Appellant states “the building has a compliant automatic fire alarm system with audible and visual notification devices installed throughout all areas; smoke/heat detectors installed in all areas, with manual fire alarm pull stations adjacent to each exit” as well as “portable fire extinguishers are located throughout as required by regulations.” The Appellant also indicated that the facility “has monitoring of the fire alarm system with signals

received by an off site alarm monitoring service and will be hooked directly to the fire department by wireless system upon fire departments' installation."

- 4) According to the Certificate of Inspection issued by the City of Foxborough Building Department on October 14, 2004, this facility has a capacity of 545 persons and is classified as an "A-3" Use Group. The first floor, which includes the room classified as a recreation hall, has a legal capacity of 363 persons, the second floor has a listed capacity of 182 persons.
- 5) The appellant contends that his building is not used as a nightclub, bar, dancehall, or discothèque, or for similar entertainment purposes. The appellant testified that the main facility is most often used principally in conjunction with the campground's recreational and social activities consistent with dining, lectures, auditorium and educational function. Appellant provided documents indicating the facility is used for a variety of different activities. Such activities include: yoga classes, candy bar bingo, dart and card games, movies, picnics, scavenger hunts, cribbage games, instructional dance lessons, ceramics classes, afternoon teas, Jimmy fund raffles, auctions, clowns, magicians and pancake breakfasts. The appellant indicated that during the summer months there are several children's dances between the hours of 7-9 p.m.. Additionally, there are two events per year that feature a small band for dancing and dining purposes. The facility does not employ the use of low level lighting; The music is kept to low levels and such dance activities end around 9 p.m.
- 6) There is never any liquor served or provided in this building.
- 7) The representative of the fire department has indicated that the Town would not oppose a finding by this Board that the installation of sprinklers is not required under the provisions of M.G.L. c.148, s. 26G1/2. He indicated that the establishment has had no incidents of overcrowding nor does he disagree with the Appellant's description of the building and its current uses.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).

- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6<sup>th</sup> Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:
- a) No theatrical stage accessories other than raised platform;
  - b) Low lighting levels;
  - c) Entertainment by a live band or recorded music generating above-normal sound levels;
  - d) Later-than-average operating hours;
  - e) Tables and seating arranged or positioned so as to create ill defined aisles;
  - f) A specific area designated for dancing;
  - g) Service facilities primarily for alcoholic beverages with limited food service; and
  - h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) The subject building has been classified as a place of assembly with a capacity of 100 persons or more. The certificate of inspection issues on October 14, 2004 indicates that the town building department has classified this building as a “Recreation Hall/A-3” with a total capacity ( both floors) of 545 persons. Therefore, the subject building is considered a public assembly with a capacity of 100 persons or more.

- 5) This Board has determined that the provisions of M.G.L. c.148, s. 26G1/2 will apply to buildings that feature “A-2 like” characteristics that typically exits in nightclubs and dance halls. Although the building department has classified this establishment as an “A-3” occupancy, such a classification, although significant, does not automatically preclude the sprinkler requirements s.26G1/2 if a building, so classified, is nevertheless used or designed as a nightclub, dancehall discotheque or bar.
- 6) This facility, is currently used for a variety of different uses relating to the recreational, instructional educational and social activities of a camp ground. According to testimony, there are several events on an annual basis that occur within this building that feature a live band or recorded music for dancing purposes. However, due to the limited frequency and occurrence of such activities, it is reasonable to conclude that these events are considered “temporary” in that they do not occur often or on a regular or routine basis. Under the provisions of M.G.L. c.148, s.26G1/2, 4<sup>th</sup> paragraph, restaurants, lecture halls, educational function facilities or other similar places of assembly are allowed to be used as a nightclub, dance hall, discotheque or similar entertainment purposes on a temporary basis without the need to install an adequate system of automatic sprinklers under said section. However, such temporary use is allowed only if a permit is issued for such use by the head of the fire department in consultation with the local building inspector.

#### **G. Decision and Order**

The Board hereby reverses the Order of the Foxborough Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2, since the building, as currently used, does not feature the “A-2 like” characteristics that are typical of a nightclub, dance hall discotheque or bar or similar entertainment purpose on a routine or regular basis. This decision is contingent upon the continued use of this particular building as described in the Board’s findings. Additionally, if the appellant desires to continue to feature, on a temporary basis, “A-2 like” events after November 15, 2007, without installing a sprinkler system in accordance with the provision of M.G.L. c. 148, s.26G1/2, a permit should be required as described herein. The requirements of said temporary use permit, its terms and conditions shall be determined as per the discretion of the head of the Foxborough Fire Department. The appellant is required to inform and apply for such a temporary use permit at least one month in advance of any “A-2 like” event.

#### **H) Vote of the Board**

|                                |          |
|--------------------------------|----------|
| Maurice Pilette, (Chairperson) | In favor |
| Stephen D. Coan                | In favor |
| Thomas Coulombe                | In favor |
| Brian Gore                     | In favor |

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Maurice Pilette", written in a cursive style.

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Maurice Pilette, P.E.. Chairman

Dated: September 28, 2005

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1<sup>st</sup> CLASS MAIL, POSTAGE PRE-PAID, TO:** Albert Daniels, President, Normandy Farms Campground, 72 West Street, Foxborough, MA 02035, **and** Deputy Chief Steven M. Bagley, Foxborough Fire Department, 40 School Street, Foxborough, MA 02035-2324.